In the High Court of Judicature at Madras

Dated:23.01.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.230 OF 1997

R.Sugumaran ..Appellant/ Respondent/Plaintiff

v

S.Padmanabhan ..Respondent/ Appellant/ Defendant

Second appeal filed under Sec 100 of CPC against the judgment and decree dated 11.7.1996 made in A.S.No.331 of 1995 on the file of Principal District Judge, Nagapattinam allowing the appeal and setting aside the decree and Judgment of the District Munsif's Court, Thiruvarur in O.S.NO.760 of 1994 dated 28.8.1995.

For Appellant : Mr.C.T.Selvam
For Respondent : Mr.R.Gopalakrishnan.

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.331of 1995 on the file of the Court of Principal District Judge, Nagapattinam. The plaintiff, who has won the case before the trial Court, and lost his case in the first appellate Court, is the appellant in the second appeal.

2. The averments in the plaint for the purpose of deciding this appeal are as follows:
The plaintiff has filed the suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property. The plaintiff has purchased the plaint schedule property as per the sale deeds dated 26.8.1992 and 22.12.1993. While mentioning the boundaries on four sides, a mistake has been crept in. To rectify the same, a rectification deed has been executed on 21.12.1993,even from the date of execution of those sale deeds, the plaintiff is in possession and enjoyment of the suit properties. The plaintiff has put up fence around the suit property in Plot No.11 at A.T.P. Nagar. The plaintiff's wife is the owner of the shop building near

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the plaint schedule property. She has also constructed a terraced house near the said shop building. Only to provide access to the said house, the plaintiff has purchased the plaint schedule property in S.No.86/1B. The defendant has no title or interest in respect of S.No.86/1B or in plot No.11, A.T.P.Nagar. The defendant is looking after the lands in S.No.86/1A under the agreement entered into between him with the owner of the said S.No.86/1A. The said land is situated on the western side of the plaint schedule property. With a view to create a passage to S.No.86/1A, the defendant on 23.11.1994 began to cut and remove the fence put up by the plaintiff around the suit property. The said attempt of the defendant was prevented by the timely intervention of the plaintiff. At any time, the defendant may trespass into the suit property and commit damage to the plaintiff's suit property. Hence, the plaintiff has come forward with the suit for permanent injunction.

3. The defendant in his written statement would contend that even though in the sale deed produced by the plaintiff, it has been recited that the suit properties purchased under the sale deed covers a portion of the survey number. Actually the properties purchased by the plaintiff under the sale deeds are a portion of the road. Even a mere reading of the said sale deeds will clearly go to show that the plaintiff has purchased only a portion of the public road. The plaintiff has no property near the plaint schedule property. As per the first sale deed, he has purchased an extent of 2 feet x 40 feet and as per the second sale deed, he had purchased an extent of 2 feet x 40 feet. The above said lands were earmarked for the purpose of providing access to a colony to be formed in future. A perusal of the sketch for A.T.P.Nagar will go to show that the suit property is a public road and that the vendors of the plaintiff have no right or title in respect of the suit property for which they executed the above sale deeds. On the sole ground, the suit is liable to be dismissed.

4. The west of A.T.P.Nagar lies Santhanam Nagar created by the assistants of the plaintiff. Even a perusal of the plan of Santhanam Nagar itself will go to show about the existence of a public pathway intending for the use of the public will be seen. The above said pathway comes within S.No.86/1B in A.T.P.Nagar. The above said road leads to Santhanam Nagar through S.No.86/1A situated on the west of S.No.86/1B. The above said road is a continuous road. Contrary to the sanctioned plan, the plaintiff has asked for a relief. The plaintiff cannot claim any right in respect of a public road. This defendant has no agreement with the land owner of S.No.86/1A.The defendant has not made any attempt to open any new way near the suit property. Since the plaintiff has put up fence across the public road, it was brought to the notice of the Municipality who has severally warned the plaintiff. This

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defendant is not a necessary party to the suit. Since some of the promoters of Santhanam Nagar have executed sale deeds for a meagre amount in respect of some of the plots therein. The plaintiff got enraged and put up fence across the road. The Municipality has removed the said obstruction made by the plaintiff on the public road. Thiruvarur Municipality is a necessary party to the suit. The plaintiff has not approached the Court with the clean hands. Hence the suit is liable to be dismissed.

5. On the above pleadings, the trial Court had framed five issues for trial. On the side of the plaintiff, P.W1 was examined and Exs P1 to P5 were marked. On the side of the defendant D.W.1 was examined and Exs B1 to B12 were marked.

6. After careful consideration of both oral and documentary evidence, the learned trial Judge has decreed the suit with costs. Aggrieved by the Judgement of the learned trial Judge, the defendant has preferred A.S.No.331 of 1995 before the Principal District Judge, Nagapattinam who has allowed the appeal thereby dismissing the suit filed by the plaintiff. Hence the plaintiff has filed this second appeal.

7. The substantial questions of law involved in this appeal are

> " Whether the lower appellate Court erred in law in construction of the documents and understanding of the lie of the land?
> 2. Whether the lower appellate Court erred in placing the onus of providing the existence of the suit property by the plaintiff/appellant?

8. I heard Mr.C.T.Selvam, learned counsel appearing for the appellant and Mr.R.Gopalakrishnan, learned counsel appearing for the respondent and considered their respective submissions.

9.The Points:

The suit is for mere injunction. The plaintiff examined himself as P.W.1 would say that he purchased the plaint schedule property under Ex A1 sale deed dated 22.12.1993. The plaint schedule property is 160 sq.ft out of 24176 sq.ft in S.No.86/1B in Thiruvarur Town. It is the case of the plaintiff that there was a mistake crept in while describing the property purchased by the plaintiff under Ex A1 sale deed. Ex A3 is the rectification deed. As per EX A1 sale deed in S.No.86/1B an extent of 40 feet x 2 feet = 80 feet and 96 sq.ft in S.No.86/1B were purchased by the plaintiff. Ex A2 is also another sale deed in favour of the plaintiff in respect of an extent of 40 feet x 2feet = 80 feet in S.No.86/1B out of 24176 sq.ft. Ex A3 rectification deed was executed to rectify the defects crept in while describing the

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northern boundary for the property purchased under Exs A1 and A2 sale deeds. At the time of executing Ex A1 sale deed, the northern boundary for the suit property purchased under Ex A1 was shown as "North of canal" and by way of rectification deed, the northern boundary has been added as North of S.No.86/1B. EX A4 is the survey sketch for the suit property. As per Ex A4 sketch, east of 86/1A lies 86/1B. Ex B12 is the approved plan. EX B12 sketch was marked through D.W.1 in the cross examination on 8.8.1995. He would depose that No.623/92 was assigned by the Director of Country Planning. In Ex B12 sketch, A.T.P.Nagar plots were shown east of plot Nos.41 and 42. Between the plots of Santhanam Nagar and A.T.P.Nagar, a road has been shown which connects Thiruvarur- Mayiladuthurai Road on the east. The learned first appellate Court Judge has observed that as per Ex B1, the plaintiff and his vendors have executed a settlement deed in favour of Thiruvarur Municipal Commissioner in respect of several properties and out of them, Item No.IV is 2520 sq.ft out of 24176 sq.ft in S.No.86/1B. The four boundaries for the said plot was shown as east of the plaintiff's Nanja lands, west of 30 feet road, south of plot No.37 and north of plot Nos.35 and 36. In the suit Thiruvarur Municipality was not made as a party. It is seen from Exs B2 and B3 photographs that a fence has been shown near Santhanam Nagar and A.T.P.Nagar dividing S.No.86/1B and 86/1A and the same has been subsequently removed. So after executing Ex B1 settlement deed in favour of Thiruvarur Municipality in respect of a road measuring 2520 sq.ft in S.No.86/1B, the plaintiff cannot claim right in respect of 160 sq.ft out of 24176 sq.ft in Town S.No.86/1B as rightly held by the first appellate Court. Under such circumstances, an order of injunction in respect of the plaint schedule property cannot be granted against the defendant as rightly held by the learned first appellate Judge, in my opinion does not warrant any interference. The points are answered accordingly.

10. In the result, the appeal is dismissed confirming the decree and Judgment in A.S.No.331 of 1995 on the file of the Court of Principal District Judge, Nagapattinam with costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Principal District Judge, Nagapattinam.

2. The District Munsif,Thiruvarur.

3. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to Mr.R. Thirugnanam, Advocate, Sr. 4524

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